

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

IN RE: TRANSDATA, INC., SMART  
METERS PATENT LITIGATION

Civil Action No. 5:12-ml-2309-C

Hon. Robin J. Cauthron

**DEFENDANTS' MOTION FOR LEAVE TO FILE A  
SUR-REPLY TO TRANSDATA, INC.'S REPLY BRIEF  
IN SUPPORT OF ITS MOTION TO COMPEL DISCOVERY FROM  
DEFENDANTS ALABAMA POWER COMPANY, GEORGIA POWER CO.,  
MISSISSIPPI POWER CO., AND WISCONSIN POWER & LIGHT CO.**

In its Reply Brief in support of its Motion to compel, TransData moves from requesting specific relief to asking that “the Court enter a broad order directing Defendants to comply fully with their discovery obligations and the Federal Rules.” (D.I. 329 (“R.Br.”) at 1.). As is evident by this change in relief, Defendants have largely responded to the alleged discovery concerns raised by TransData, and were in the process of doing so before TransData filed its current motion.

Regardless of the discovery it has already received, in an effort to try and show that its premature Motion to Compel is still somehow warranted, TransData raises a number of new alleged discovery issues, and further attempts to make its arguments through a number of misleading statements. In particular, TransData’s Reply Brief raises the following new issues, misstatements, and omissions:

- TransData raises for the first time Wisconsin Power’s alleged identification of Mr. Edward Fischler in its interrogatory response, and in doing so omits significant information regarding this issue that has the potential to mislead the court—this was a typographical error that opposing counsel would normally accept as a professional courtesy and move on;

- TransData raises an issue regarding Defendants' alleged production of certain meters that were not listed in their interrogatory responses—this issue was minor and could have been resolved quickly with a phone call to counsel;
- TransData incorrectly states that Defendants have refused to fully identify all of their electric meters and wireless modules, but in reality TransData's counsel completely overlooked database documents that Defendants had provided to TransData and had specifically identified in their supplemental interrogatory responses;
- TransData raises additional documents it believes are improperly identified in Defendants' Rule 33(d) requests;
- TransData incorrectly suggests that Defendants intentionally withheld documents in this litigation, such as during the deposition of Mr. Murchison; and
- TransData makes statements suggesting that Defendants provided the majority of their production within 30 days of TransData's current Motion to Compel, which is not only incorrect, but ignores the fact that TransData has produced substantially more documents than Defendants since bringing this motion.

Defendants respectfully seek leave to file the sur-reply attached hereto in order to address these and other new and misleading arguments.

Pursuant to Local Civil Rule 7.1(k), Defendants state that counsel for TransData has indicated that it does not object to the requested relief provided that Defendants will not oppose TransData's request for leave to file a response to Defendants' sur-reply.

### **RELIEF REQUESTED**

In view of the above, Defendants Alabama Power Co., Georgia Power Co., Mississippi Power Co., and Wisconsin Power & Light Co. respectfully request that the Court grant them leave to file the brief sur-reply in the form attached hereto as Exhibit 1 in response to Plaintiff TransData's Reply Brief in Support of its Motion to Compel

Discovery from Defendants Alabama Power Company, Georgia Power Company, Mississippi Power Company, and Wisconsin Power & Light Company (D.I. 329).

Dated: February 26, 2014

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 26, 2014, I electronically filed the foregoing with the Clerk of the Court of the U.S. District Court, Western District of Oklahoma, using the electronic case filing system of the Court, which will send a notice of electronic filing to the following counsel of record:

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